IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33941

STATE OF IDAHO,	)	**2008 Unpublished Opinion No. 483**
	)	
Plaintiff-Respondent,	)	**Filed: May 29, 2008**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
EDWARD CARMINE JARZABEK,	)	**THIS IS AN UNPUBLISHED**
	)	**OPINION AND SHALL NOT**
Defendant-Appellant.	)	**BE CITED AS AUTHORITY**
	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Deborah A. Bail, District Judge.

Judgment of conviction for driving under the influence and leaving the scene of an accident resulting in an injury, affirmed.

Teresa A. Hampton of Hampton & Elliott, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Daniel W. Bower, Deputy Attorney General, Boise, for respondent. Daniel W. Bower argued.

PERRY, Judge

Edward Carmine Jarzabek appeals from his judgment of conviction for driving under the influence and for leaving the scene of an accident resulting in an injury. Specifically, Jarzabek challenges the district court's order denying his motion to suppress evidence, the sufficiency of the evidence presented at trial, and several of the prosecutor's comments to the jury. For the reasons set forth below, we affirm.

I.
FACTS AND PROCEDURE

At approximately 2:40 a.m. on March 18, 2006, a passenger vehicle struck a pedestrian in downtown Boise as she crossed the intersection of Capitol and Main Streets with her sister. After the accident, the driver of the vehicle drove away from the scene without stopping. The injured victim's sister called the police and reported that the vehicle involved in the accident was a newer-model, black Audi, driven by a male with blond hair. The victim's sister also indicated

that the suspect was driving away from the scene of the accident on Capitol, which is a one-way street. The night preceding the morning of the accident was Saint Patrick's Day, and many police officers were located in the downtown area in the early morning hours due to the holiday festivities. The first officer to respond to the accident blocked the intersection of Capitol and Main and obtained additional information from witnesses, including one unidentified witness's statement that the black Audi had dealer license plates. The officer broadcast the information regarding the dealer license plates over a police radio channel.

Two other officers in a patrol car had already proceeded to the intersection of Capitol Street and Idaho Street--one block down Capitol Street in the direction the suspect had allegedly driven. These officers stopped there because they mistakenly believed that the accident had occurred at that intersection. They heard on dispatch that the accident had occurred at the intersection behind them and also noticed another patrol car at the intersection of Capitol Street and Bannock Street, one block in front of them. The officers looked west down Idaho Street, which is a one-way street in that direction, and observed a dark-colored car parked in a temporary parking space one-and-a-half blocks away. As the officers proceeded toward the car, they observed that it was a dark-colored Audi with dealer license plates. The officers stopped the Audi after it pulled out of the parking space. Jarzabek was driving the Audi. The officers suspected that Jarzabek had hit the pedestrian and that he had been drinking. An officer with specialized training in dealing with impaired drivers arrived and administered field sobriety tests. Jarzabek refused to take a breath test, but the officer concluded from the field sobriety tests and other observations that Jarzabek was intoxicated. The officer arrested Jarzabek.

The state charged Jarzabek with driving under the influence, I.C. § 18-8004, and with leaving the scene of an accident resulting in an injury, I.C. § 18-8007. Jarzabek filed a motion to suppress the evidence seized subsequent to the stop on the grounds that the stop and arrest were unlawful. After a hearing, the district court denied the motion to suppress. Jarzabek pled not guilty and proceeded to trial. During the prosecutor's closing argument, defense counsel objected once to the prosecutor's argument as an impermissible statement of her opinion. The district court overruled the objection. The jury found Jarzabek guilty of both charges. Jarzabek filed a motion for judgment of acquittal, which the district court denied. Jarzabek appeals.

II.
ANALYSIS

A. Motion to Suppress

Jarzabek asserts that the district court erred in denying his motion to suppress because the police did not have reasonable suspicion to stop him.[1] The district court ruled that the officers had a reasonable suspicion to stop Jarzabek when they observed him driving a newer-model, dark-colored Audi in close temporal and geographic proximity to the scene of the accident when police were well-positioned to observe the limited number of vehicles in the area.

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact which are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

A traffic stop by an officer constitutes a seizure of the vehicle's occupants and implicates the Fourth Amendment's prohibition against unreasonable searches and seizures. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979); *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). Under the Fourth Amendment, an officer may stop a vehicle to investigate possible criminal behavior if there is a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws. *United States v. Cortez*, 449 U.S. 411, 417 (1981); *State v. Flowers*, 131 Idaho 205, 208, 953 P.2d 645, 648 (Ct. App. 1998). The reasonableness of the suspicion must be evaluated upon the totality of the circumstances at the time of the stop. *State v. Ferreira*, 133 Idaho 474, 483, 988 P.2d 700, 709 (Ct. App. 1999). The reasonable suspicion standard requires less than probable cause but more than mere speculation or instinct on the part of the officer. *Id.* An officer may draw reasonable inferences from the facts in his or her possession, and those inferences may be drawn from the officer's experience and law

---

[1] Jarzabek also argued below that the police unlawfully arrested him because they lacked probable cause to believe he had committed a crime. However, Jarzabek only challenges the legality of the initial stop on appeal.

enforcement training. *State v. Montague*, 114 Idaho 319, 321, 756 P.2d 1083, 1085 (Ct. App. 1988).

Reasonable suspicion may be supplied by an informant's tip or a citizen's report of suspect activity. *State v. Larson*¸ 135 Idaho 99, 101, 15 P.3d 334, 336 (Ct. App. 2000). Whether information from such a source is sufficient to create reasonable suspicion depends upon the content and reliability of the information presented by the source, including whether the informant reveals his or her identity and the basis of his or her knowledge. *State v. Zapata-Reyes*, 144 Idaho 703, 707, 169 P.3d 291, 295 (Ct. App. 2007); *Larson*¸ 135 Idaho at 101, 15 P.3d at 336. An anonymous tip, standing alone, is generally not enough to justify a stop because an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity. *Larson*¸ 135 Idaho at 101, 15 P.3d at 336. However, when the information from an anonymous tip bears sufficient indicia of reliability or is corroborated by independent police observations, it may provide justification for a stop. *Id.* Additionally, where the information comes from a known citizen informant rather than an anonymous tipster, the citizen's disclosure of his or her identity, which carries the risk of accountability if the allegations turn out to be fabricated, is generally deemed adequate to show veracity and reliability. *Id. See also State v. O'Bryan*, 96 Idaho 548, 552, 531 P.2d 1193, 1197 (1975); *State v. Peterson*, 133 Idaho 44, 47, 981 P.2d 1154, 1157 (Ct. App. 1999).

The district court properly determined that the police possessed reasonable suspicion to stop Jarzabek based on the information provided by the victim's sister. The police obtained the information regarding the make and color of the suspect's vehicle and its direction of travel from the victim's sister--a known and therefore reliable source. The description of the car as a newer-model, black Audi substantially matched that of Jarzabek's newer-model, navy blue Audi, particularly when the stop occurred at nighttime when the distinction between black and navy blue could be obscured. The victim's sister indicated that she called the police within "seconds, maybe a minute," after the accident. Two officers testified at the suppression hearing that there were very few vehicles in the area immediately following the accident. The officers' testimony and the dispatch log indicate that the officers stopped Jarzabek within three minutes and possibly within as little as thirty seconds of hearing the report from dispatch.

Jarzabek asserts unpersuasively that the initial police dispatch relayed a tip from a witness that the suspect had actually turned left onto Bannock Street and therefore police had no

reason to believe Jarzabek was the suspect when he was located on Idaho Street. Whether officers have the requisite reasonable suspicion to detain a citizen is determined on the basis of the totality of the circumstances--the collective knowledge of all those officers and dispatchers involved. *State v. Van Dorne*, 139 Idaho 961, 964, 88 P.3d 780, 783 (Ct. App. 2004). One of the two officers in the patrol car that stopped Jarzabek testified at the suppression hearing that another patrol car was already located at the intersection of Bannock Street and Capitol Street at the time he looked down Idaho Street. Additionally, an officer, who listened to the information broadcast on the police radio channels, testified that the first officer to respond to the area within seconds of the dispatch looked "all the way down" Bannock Street but observed no vehicles. The collective knowledge of the officers and dispatchers involved thus indicated that the suspect was more likely located on Idaho Street than Bannock Street.

Because the police were in a position to observe the limited number of vehicles in the condensed geographic area surrounding the scene of the accident, the newer-model, black Audi described by the victim's sister was easily distinguishable from other vehicles. This is not a case where the police conducted a random stop following a report that described a vehicle with very general characteristics.[2] *See Zapata-Reyes*, 144 Idaho at 708, 169 P.3d at 296. Additionally, this is not a case where the police relied on an anonymous tip for the description of the vehicle's make and color. *See State v. Cerino*, 141 Idaho 736, 738, 117 P.3d 876, 878 (Ct. App. 2005). Rather, this is a case where the police stopped the only vehicle in the area under circumstances where they reasonably believed that the occupant had just committed a crime. *See State v. Rader*, 135 Idaho 273, 276, 16 P.3d 949, 952 (Ct. App. 2000). When the officers observed Jarzabek's newer-model, navy blue Audi--at nighttime when it could easily appear black--a few blocks from the accident in a likely direction that the suspect had fled, they possessed reasonable suspicion to believe that Jarzabek's vehicle was involved in the accident. The district court properly ruled that the officers had reasonable suspicion that Jarzabek was the driver involved in the accident. The district court did not err in denying Jarzabek's motion to suppress.

---

[2] Indeed, the officer who first contacted Jarzabek after the stop testified at the preliminary hearing that Jarzabek told him the Audi was rare and there were not many others like it in the area.

B. Sufficiency of the Evidence

Jarzabek next contests the sufficiency of the evidence in support of both of his convictions. Specifically, Jarzabek asserts that the evidence regarding the charge of leaving the scene of an accident resulting in an injury was inconsistent and failed to establish that Jarzabek was the driver who struck the victim. With regard to the DUI charge, Jarzabek asserts that the evidence of his intoxication was too limited to support a finding of guilt.

Appellate review of the sufficiency of the evidence is limited in scope. A finding of guilt will not be overturned on appeal where there is substantial evidence upon which a reasonable trier of fact could have found that the prosecution sustained its burden of proving the essential elements of a crime beyond a reasonable doubt. *State v. Herrera-Brito*, 131 Idaho 383, 385, 957 P.2d 1099, 1101 (Ct. App. 1998); *State v. Knutson*, 121 Idaho 101, 104, 822 P.2d 998, 1001 (Ct. App. 1991). We will not substitute our view for that of the trier of fact as to the credibility of the witnesses, the weight to be given to the testimony, and the reasonable inferences to be drawn from the evidence. *Knutson*, 121 Idaho at 104, 822 P.2d at 1001; *State v. Decker*, 108 Idaho 683, 684, 701 P.2d 303, 304 (Ct. App. 1985). Moreover, we will consider the evidence in the light most favorable to the prosecution. *Herrera-Brito*, 131 Idaho at 385, 957 P.2d at 1101; *Knutson*, 121 Idaho at 104, 822 P.2d at 1001.

The elements of leaving the scene of an accident resulting in an injury are set forth in I.C. § 18-8007. That section requires a person involved in an accident resulting in an injury to remain at the scene of the accident to render reasonable assistance to the injured person and to provide his or her name and address and information regarding insurance and registration. Jarzabek's argument focuses on the adequacy of the evidence that he was the driver who struck the victim and fled the scene. The evidence presented at trial included the victim's testimony that she was struck in the lower legs by a dark-colored sedan, which was driven by a man with blond hair and tan skin. The victim then identified Jarzabek as the driver who struck her. The victim's sister testified that she heard her sister "yelp," and then turned around to see her sister on the side of the car after being hit by the front bumper on the driver's side, and she too identified Jarzabek as the driver at trial. The evidence also included photographs of Jarzabek's vehicle on the night of the accident, which depicted hand prints on the driver's side of the hood and smear marks through a covering of dust down the driver's side of the vehicle. Additionally, the evidence included an audio tape wherein Jarzabek asked an officer at the jail on the night of

his arrest whether he had "hit a boy or a girl." Jarzabek relies on inconsistencies between the eyewitness testimony on the specifics of the accident and the testimony relating the physical evidence. Although Jarzabek's expert and the officer both testified that the physical evidence contradicted the testimony of the victim and her sister, the officer testified that eyewitness accounts of an accident are rarely consistent with the physical evidence. The officer further testified that he was convinced based on physical evidence and the eyewitness accounts that Jarzabek's vehicle struck the victim. To the extent that Jarzabek's expert disagreed with the officer, we decline to second-guess the jury's apparent determination that the officer was correct. We conclude that there was substantial evidence for the jury to find Jarzabek guilty of leaving the scene of an accident resulting in an injury.

The elements of driving under the influence are set forth in I.C. § 18-8004. Jarzabek challenges the evidence of his intoxication. Although Jarzabek refused to take a breath test to confirm his level of intoxication forensically, the state may also prove a defendant was intoxicated by direct or circumstantial evidence of impairment of ability to drive due to the influence of alcohol. *See State v. Edmondson*, 125 Idaho 132, 134, 867 P.2d 1006, 1008 (Ct. App. 1994). At trial, an officer with specialized training in detecting intoxication testified that when he arrived at the scene he observed Jarzabek's eyes were red, glassy, and bloodshot. The officer also testified that Jarzabek smelled of alcoholic beverages. The officer administered three field sobriety tests to Jarzabek within minutes of the stop. Jarzabek met the "decision points" for the walk-and-turn test and the gaze nystagmus test. The officer testified that meeting the decision points on field sobriety tests indicates that there is at least a ninety percent chance that the subject's blood alcohol content is above the legal limit. Jarzabek did not meet the decision points for the one-leg stand test and, therefore, that test did not necessarily indicate that Jarzabek was intoxicated. The officer also testified, however, that based on all of his observations he believed that Jarzabek was under the influence of alcohol. Additionally, as noted above, there was substantial evidence that Jarzabek struck a pedestrian with his vehicle and then fled the scene of the accident, which further supported the evidence of intoxication. We conclude that there was substantial evidence for the jury to find Jarzabek guilty of driving under the influence.

C. Prosecutorial Misconduct

Jarzabek next asserts that the prosecutor's comments to the jury prejudiced his right to a fair trial. Specifically, Jarzabek identifies several instances where he asserts the prosecutor

improperly vouched for the testimony of witnesses, mischaracterized the evidence or defense counsel's argument, or appealed to the passions or prejudices of the jury. Jarzabek failed to object below to all but one of the instances of alleged misconduct he cites on appeal.

Although our system of criminal justice is adversarial in nature, and the prosecutor is expected to be diligent and leave no stone unturned, he or she is nevertheless expected and required to be fair. *State v. Field*, 144 Idaho 559, 571, 165 P.3d 273, 285 (2007). However, in reviewing allegations of prosecutorial misconduct we must keep in mind the realities of trial. *Id.* A fair trial is not necessarily a perfect trial. *Id.* When there has been a contemporaneous objection we determine factually if there was prosecutorial misconduct, then we determine whether the error was harmless. *Id.*; *State v. Hodges*, 105 Idaho 588, 592, 671 P.2d 1051, 1055 (1983); *State v. Phillips*, 144 Idaho 82, 88, 156 P.3d 583, 589 (Ct. App. 2007). A conviction will not be set aside for small errors or defects that have little, if any, likelihood of having changed the results of the trial. *State v. Pecor*, 132 Idaho 359, 367-68, 972 P.2d 737, 745-46 (Ct. App. 1998). Where prosecutorial misconduct is shown, the test for harmless error is whether the appellate court can conclude, beyond a reasonable doubt, that the result of the trial would not have been different absent the misconduct. *Id.* at 368, 972 P.2d at 746.

When there is no contemporaneous objection a conviction will be reversed for prosecutorial misconduct only if the conduct is sufficiently egregious so as to result in fundamental error. *Field*, 144 Idaho at 571, 165 P.3d at 285. Prosecutorial misconduct rises to the level of fundamental error when it is calculated to inflame the minds of jurors and arouse prejudice or passion against the defendant, or is so inflammatory that the jurors may be influenced to determine guilt on factors outside the evidence. *State v. Kuhn*, 139 Idaho 710, 715, 85 P.3d 1109, 1114 (Ct. App. 2003). Prosecutorial misconduct rises to the level of fundamental error only if the acts or comments constituting the misconduct are so egregious or inflammatory that any ensuing prejudice could not have been remedied by a curative jury instruction. *Id.* The rationale of this rule is that even a timely objection to such inflammatory statements would not have cured the inherent prejudice. *Id.* However, even when prosecutorial misconduct has resulted in fundamental error, the conviction will not be reversed when that error is harmless. *Field*, 144 Idaho at 571, 165 P.3d at 285.

When the defendant did not object at trial, our inquiry is, thus, three-tiered. *See id.* First, we determine factually if there was prosecutorial misconduct. If there was, we determine

whether the misconduct rose to the level of fundamental error. Finally, if we conclude that it did, we then consider whether such misconduct prejudiced the defendant's right to a fair trial or whether it was harmless.

All of the comments that Jarzabek asserts were improper occurred during the prosecutor's closing arguments. Closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. *Phillips*, 144 Idaho at 86, 156 P.3d at 587. Its purpose is to enlighten the jury and to help the jurors remember and interpret the evidence. *Id.*; *State v. Reynolds*, 120 Idaho 445, 450, 816 P.2d 1002, 1007 (Ct. App. 1991). Both sides have traditionally been afforded considerable latitude in closing argument to the jury and are entitled to discuss fully, from their respective standpoints, the evidence and the inferences to be drawn therefrom. *State v. Sheahan*, 139 Idaho 267, 280, 77 P.3d 956, 969 (2003); *Phillips*, 144 Idaho at 86, 156 P.3d at 587.

Jarzabek first asserts that the prosecutor's comments regarding Jarzabek's level of intoxication misrepresented the evidence. A closing argument may not misrepresent or mischaracterize the evidence or refer to facts not in evidence. *Phillips*, 144 Idaho at 86, 156 P.3d at 587. The prosecutor stated: "There's not testimony here about how much he had to drink. I submit to you that the evidence is there that he had more than three drinks between 5:30 and 8:00 that night." Jarzabek asserts that the only evidence regarding the number of drinks he consumed was an officer's testimony that Jarzabek stated that he had only consumed three drinks. The prosecutor did not mischaracterize the evidence but, rather, the prosecutor properly asserted that the jury should disregard Jarzabek's statements to the officer that he consumed only three drinks several hours prior to the accident and should rely on the officer's testimony that he believed Jarzabek was intoxicated. These comments were not improper.

Jarzabek next asserts that the prosecutor vouched for the testimony of the victim and her sister. Closing argument should not include counsel's personal opinions and beliefs about the credibility of a witness. *Id.* Jarzabek cites the prosecutor's statement that the victim and her sister "were good reporters about what occurred that night." The prosecutor made this statement after asserting the evidence indicated that, although the victim and her sister had consumed some alcohol on the night in question, they had not consumed so much that they were unable to perceive events that occurred. Jarzabek also cites the prosecutor's assertion that "it's pretty dang clear" that the victim and her sister "didn't get together before they came to the courthouse" to

write and memorize a script. The prosecutor made this statement while discussing the inconsistencies in the testimony of the victim and her sister regarding the specifics of the accident. Jarzabek did not object to these comments below. We conclude that Jarzabek has not demonstrated that the prosecutor improperly vouched for the testimony of the victim and her sister.

Jarzabek also asserts that the prosecutor improperly vouched for the credibility of the officers. Jarzabek cites the prosecutor's statement that "we're lucky enough that we've got some really great trained officers who have special knowledge in this area of detecting drivers under the influence of alcohol." The prosecutor merely used this comment to preface her discussion of the qualifications and training of the officer who conducted the field sobriety tests. Jarzabek did not object to the comment below and has not demonstrated that it was improper on appeal.

Jarzabek next asserts that the prosecutor improperly provided her opinion on Jarzabek's actions. A prosecuting attorney may express an opinion in argument as to the truth or falsity of testimony or the guilt of the defendant when such opinion is based upon the evidence, but the prosecutor should exercise caution to avoid interjecting his or her personal belief and should explicitly state that the opinion is based solely on inferences from evidence presented at trial. *Phillips*, 144 Idaho at 86 n.1, 156 P.3d at 587 n.1. The safer course is for a prosecutor to avoid the statement of opinion, as well as the disfavored phrases "I think" and "I believe" altogether. *Id.* When commenting on Jarzabek's location where the police discovered him, the prosecutor stated "*I think* the defendant was hiding. That's exactly what *I think*." (Emphasis added.) Jarzabek objected to this comment as an improper opinion statement. The district court overruled the objection. Although the prosecutor expressed her personal opinion with the disfavored phrase "I think," the statement was not improper when placed in context. The prosecutor made the statement after discussing the evidence of Jarzabek's location prior to the stop and the period of time he had been there. The prosecutor pointed to evidence that contradicted Jarzabek's statement to the officers that he had been parked for forty minutes prior to the stop. The prosecutor properly inferred that the evidence of a heavy police presence on other streets supported a conclusion that Jarzabek had not been in the parking space for forty minutes but, rather, had recently arrived there to hide from the police after the accident.

Jarzabek also asserts that the prosecutor improperly discussed using commonsense about crosswalks. Jarzabek cites the following statement:

> Commonsense, everybody has been downtown where they've been in the crosswalk and someone's not looking at you and you're looking at them and all of a sudden they come to a halt and you look at them. How many times have you looked at somebody's eyes when they do that thinking "you nut." You know, I wanted to kick their car actually. I've come pretty close a couple of times down here in this corridor.

This statement does not appear to be improper vouching for testimony from any witnesses, and Jarzabek does not indicate any additional basis supporting his assertion that this statement was improper. Jarzabek did not object to these comments below. Although these comments may have been beyond the scope of the evidence, Jarzabek has not demonstrated that they were improper.

Jarzabek also asserts that the prosecutor mischaracterized defense counsel's argument in order to inflame the jury. Appeals to emotion, passion, or prejudice of the jury through use of inflammatory tactics are impermissible. *Phillips*, 144 Idaho at 87, 156 P.3d at 588. During defense counsel's closing argument, he attempted to explain Jarzabek's question to an officer after being arrested regarding whether he had hit a boy or a girl. Defense counsel theorized that Jarzabek's question indicated that Jarzabek did not know what happened and thus could not have committed the crime. In response during the prosecutor's rebuttal, she stated "I think counsel would submit to you he wants you to believe that it is some kind of joke or something." Jarzabek did not object to this comment below and must therefore demonstrate that it constituted fundamental error. Placed in context, the prosecutor's comment was an attempt to convince the jury that Jarzabek was serious when he implicitly confessed to hitting a pedestrian because he was still in handcuffs when he asked the question and would have been unlikely to make a joke. This comment was not improper.

Finally, Jarzabek asserts that the prosecutor improperly referred to the prosecutor's office and her own credibility when discussing the evidence upon which she was asking the jury to rely. Jarzabek cites a portion of the prosecutor's final statements during rebuttal argument wherein she instructed the jury to call her boss to tell him that she had "lost her flippin mind" if the jury thought that she was asking them to convict Jarzabek based solely on the evidence of the handprints on the hood of his vehicle. This comment was immediately followed by a summation of the evidence upon which the prosecutor wanted the jury to rely, including the make and model of Jarzabek's vehicle, the descriptions of the driver, and positive identifications of Jarzabek as

the driver. Jarzabek did not object to these comments below. Although the prosecutor may have improperly referenced her own credibility as an officer of the court, we conclude that the prosecutor's statement did not rise to the level of fundamental error that the district court could not have remedied with a curative instruction.

In sum, we hold that Jarzabek has not demonstrated that he is entitled to relief based on any of the prosecutor's comments.

III.

CONCLUSION

The district court properly ruled that the officers possessed a reasonable suspicion that Jarzabek was the driver involved in the accident and, therefore, did not err in denying Jarzabek's motion to suppress. We conclude that there was substantial evidence for the jury to find Jarzabek guilty of leaving the scene of an accident resulting in an injury and of driving under the influence. Jarzabek has not demonstrated that he is entitled to relief based on any of the prosecutor's comments during her closing arguments. We therefore affirm Jarzabek's judgment of conviction for driving under the influence and for leaving the scene of an accident resulting in an injury.

Chief Judge GUTIERREZ and Judge Pro Tem SCHWARTZMAN, **CONCUR.**